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AF/2152/13

Docket No.: 3498P014

Patent

In re the Application of: Rajugopal R. Gubbi

(inventor(s))

AMENDMENT UNDER

37 C.F.R. § 1.116

EXPEDITED PROCEDURE

Application No.: 09/151,579

Filed: September 11, 1998

EXAMINING GROUP 2152

For: METHOD AND APPARATUS FOR ACCESSING A COMPUTER NETWORK COMMUNICATION

CHANNEL

(title)

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SIR: Transmitted herewith is an **Amendment After Final Action** for the above application.

☐ Small entity status of this application under 37 C.F.R. §§ 1.9 and 1.27 has been established by a verified statement previously submitted.

☐ A verified statement to establish small entity status under 37 C.F.R. §§ 1.9 and 1.27 is enclosed.

☐ No additional fee is required.

☒ **A Notice of Appeal is enclosed.**

☒ A check in the amount of \$ 310.00 is attached for presentation for the Notice of Appeal.

☐ Applicant(s) hereby Petition(s) for an Extension of Time of _____ month(s) pursuant to 37 C.F.R. § 1.136(a).

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Attorney's Docket No.: 3498P014

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of:

Rajugopal R. Gubbi, et al.

Application No.: 09/151,579

Filing Date: September 11, 1998

For: METHOD AND APPARATUS FOR ACCESSING A
COMPUTER NETWORK COMMUNICATION
CHANNEL

Examiner: Willett, S.

Art Group: 2152

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RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE - ART UNIT 2152

Sir:

The rejections set forth in the Office Action of May 18, 2001 are respectfully traversed. For at least the reasons set forth below, all of the claims currently pending are patentable over the cited art of record. At the outset, it is noted that all of the present rejections are based on arguments that postulate the features of the present claims would be obvious in light of various combinations of the references. The only indicated motivation for making these combinations are barebones statements that incorporation of the teachings of one reference into another would be made because such combination would "insure that communications demands are met." This

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is not a statement of motivation for making a combination, rather it is merely a restatement of the basic problem at hand. Instead of providing a true motivation for the combination, the Office Action has merely used the teachings of the present application as a blueprint to gather together and assemble various components of the prior art. This is a classic example of the use of hindsight reconstruction and cannot be properly used as grounds for rejecting the present claims.

The U.S. Court of Appeals for the Federal Circuit has caused against such applications of hindsight by specifically indicating that when an obviousness rejection is made based upon a combination of references an Examiner "must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." In re Rouffet, 149 F. 3d 1350, 1357(Fed. Cir. 1998). Merely indicating, as in the present Office Action, that the claimed invention would be obvious to one of ordinary skill in the art based on the combination of the references is inadequate. Instead, what is needed is a showing of motivation, either from the references themselves or the knowledge of those of ordinary skill in the art, for the combination being relied upon.

As indicated above, in the present case there has been no showing of such motivation. Instead, the Office Action deconstructs the subject matter of the claims into the constituent components, states where each such component may be found in one of the cited references, and then concludes it would have been obvious to combine the references to arrive at the claimed invention. This meager analysis is not sufficient to support the present rejections and the Examiner has failed to satisfy his burden to show why one would be so motivated as to come up with the combination. Accordingly, the present rejections should be removed.

In addition to the forgoing, even if the rejections relied upon in the Office Action were made, the present claims would still be patentable thereover. Borgstahl et al., U.S. Patent No. 5,909,183, describes a scheme for peer-to-peer communications. This is in contrast to the network communications recited in the claims. In the scheme described by Borgstahl, for example at cols. 6 and 7, a device listens to a channel to see if a compatible protocol is in use. If

no transmissions are detected, the device listens to see if a connection attempt is being sought. Only if no connection attempt by another peer is being sought does this device transmit a message. That is, only if the channel is silent does the device in question make a transmission. See, e.g., the flowchart set forth in Figure 6. Thus, Borgstahl does not teach a scheme where a device waits for a quiet slot within a communication in an existing channel. Rather, Borgstahl teaches a scheme wherein the device transmits only if a channel is completely clear of communications. Clearly, the claims are patentable over Borgstahl.

Altwater, U.S. Patent No. 5,889,771, describes frequency hopping network wherein a device searches for an open frequency in order to make a transmission. In other words, the communication scheme described by Altwater fills empty frequencies in an active frequency hopping network that might otherwise go unused. In contrast, the claims recite a scheme wherein quiet time slots are designated so as to allow for transmissions by devices seeking to enter a network. Altwater clearly fails to cure the deficiencies noted with respect to Borgstahl and, therefore, the claims are patentable over the combination of Borgstahl and Altwater.

Matsuno, U.S. Patent No. 5,548,296, describes a scheme wherein one base station in a network that is surrounded by a collection of other base stations send a request to the other, surrounding base stations seeking available channels or time slots from those base stations. When each of the other base stations has reported its idle channels or time slots, the base station that originated the request chooses a common idle channel or time slot to the group and transmits a signal therein. In other words, in the Matsuno scheme no time slot is designated as idle. Rather, the idle time slot depends upon finding a common idle time slot or channel amongst a collection of base stations. There is no protocol which designates a particular timeslots has being idle and the determination of a "idle time slot" various depending upon the time of which the original bay station transmits its request. Thus, even if this scheme where somehow incorporated in the system taught by Borgstahl, one would still not arrive at the claimed invention because there would be no designated idle or quiet timeslot in a channel. For this reason, the claims are patentable over the combination of Borgstahl, Altwater and/or Matsuno.

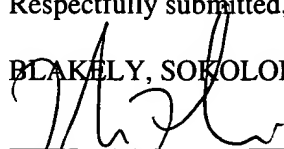
Mosebrook et al., U.S. Patent No. 5,905,442, describes a scheme in which various electrical devices, such as those used for controlling electric lights are communicatively coupled to a central controller through an RF communication link. In such a network, a manual "install mode" is used at the network controller in order to add devices to the network. Therefore, no quiet time slot is even necessary in the Mosebrook scheme because installation of new devices to the network is done manually. In short, absolutely nothing in the Mosebrook reference teaches or suggests the use of a quiet time slot and, accordingly, the claims are patentable over Mosebrook.

Barrett et al., U.S. Patent No. 5,699,532, fails to cure these deficiencies. Barrett describes a multiple path channel interface for a computer input/output system and goes on to describe a negotiating process for determining "certain communication parameters at the time a transmission group is activated." See Barrett at col. 9, ll. 64 – col. 10, l. 3. Barrett fails to describe the use of a communication protocol that includes a quiet time slot. Indeed, even the bandwidth negotiations recited in the present claims are different than those described by Barrett because the claimed bandwidth negotiations initiate with a transmission in a quiet time slot and, as indicated above, Barrett fails to describe such a scheme. Accordingly, the claims are patentable over the combination of Mosebrook and Barrett.

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Respectfully submitted,

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